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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,263	03/31/2004	Stephen Alan Foxon	072819.0157	9837

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/816,263

Applicant(s)

FOXON, STEPHEN ALAN

Examiner

Cheryl Juska

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13, 14 and 25 is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 6-12 is/are rejected.
- 7) ☒ Claim(s) 3-5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>09/26/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission of an Information Disclosure Statement filed on September 26, 2006 has been entered.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on September 26, 2006 was filed after the mailing date of the notice of allowance on July 11, 2006. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

3. In view of said IDS, the indicated allowable subject matter of claims 1-14 and 25 as set forth in the paragraph spanning pages 3-4 of the Office Action mailed March 30, 2006 is hereby withdrawn.

Claim Objections

4. Claim 1 is objected to because of the following informality: In lines 9-10 of claim 1, the phrase “is overlain by the *or* at least one...” is grammatically incorrect. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 6-9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 174 755 issued to Dury.

Dury discloses a surface carpet layer having a bonded backing (i.e., resin impregnated textile layer) overlying a random pile layer having a layer of adhesive on the back surface thereof (i.e., a compact resin loaded fiber stratum) (page 4, line 27 – page 5, line 1, page 5, lines 19-31, page 6, lines 3-15, and Figures 1-3). The random pile layer contains infill of rubber particles and sand that is sprinkled and/or burshed into said pile (page 5, lines 2-9). Dury also teaches the use of a water-permeable membrane of a nonwoven fabric (i.e., layer of stratified fibrous material) underlying the random pile layer (page 6, line 34-page 7, line 1 and Figure 5). Thus, claims 1, 6-9, 11, and 12 are anticipated by the cited Dury reference.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Dury reference.

While Dury fails to explicitly teach a stratified fibrous material of a lapped fiber layer, it is argued that the nonwoven fabric taught by Dury renders obvious a nonwoven made of a lapped fiber layer, such as a carded web. Applicant is hereby given Official Notice that carded webs are often the basis for needlepunched or through air bonded nonwovens. As such, it would have been readily obvious to one of ordinary skill in the art to employ a stratified fibrous material of a lapped fiber layer for the water-permeable nonwoven fabric of the Dury reference. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claim 2 is rejected.

Regarding claim 10, while Dury fails to explicitly teach a carpet layer having pile laden with particulate material, the reference does teach a surface carpet layer of a “conventional artificial turf” (page 6, lines 11-12). Applicant is hereby given Official Notice that it is readily known in the art of artificial turf to include a particulate infill. As such, it would have been readily obvious to one of ordinary skill in the art to add infill to the “conventional artificial turf” of the Dury reference. Therefore, claim 10 is also rejected.

Allowable Subject Matter

9. Claims 13, 14, and 25 are allowed.
10. Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
11. While Dury teaches the specifics of claim 1, the reference fails to teach or fairly suggest a vertically lapped stratified fibrous material underlying the random pile layer. Since the intent of the “stratified fibrous material” according to Dury is to be a water-permeable layer for lining the excavated soil, one skilled in the art would not be motivated to substitute a vertically lapped (i.e., resilient) nonwoven for said layer of Dury. Thus, claims 3, 13, 14, and 25 contain allowable subject matter.
12. Additionally, Dury fails to teach alternating a plurality of random pile layers with a layer or layers of stratified fibrous material. One skilled in the art would not be properly motivated to add a second random pile layer, wherein said second random pile layer is overlaid by the stratified fibrous material (i.e., water-permeable nonwoven lining). Hence, claims 4 and 5 contain allowable subject matter.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Terrel Morris can be reached

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at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
October 9, 2006